



FedFin Client Report

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Beyond Bitcoin, AML Details Begin to Divide Senate Banking

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Executive Summary

In this report, we analyze today's second Senate Banking hearing on modernizing the U.S. anti-money laundering (AML) framework. It evidenced continued apprehension about details despite bipartisan agreement on broad reform principles. Although Chairman Crapo (R-ID) and Ranking Member Brown (D-OH) agreed that legislation should address beneficial-ownership disclosure requirements, Sen. Brown expressed reservations about possible privacy problems and continued to push back on increasing SAR thresholds. There was, though, broad agreement by senators from both parties that cryptocurrency is being used by criminal actors and rogue states, although Treasury Under-Secretary Mandelker emphasized that SAR reporting is already required in this area. When pressed for broad AML-legislative recommendations, she emphasized the need for care and, when pressed for a timeline, said that recommendations should be ready within six months. If Congress awaits these, as seems likely, then statutory change in this Congress is at best uncertain.

Analysis

Opening Statements

Chairman Crapo said that there is a bipartisan consensus on addressing beneficial ownership, information sharing, and reporting requirements but emphasized that more discussion is needed. He also said that bank regulators need to ensure that there is not a "check the box" mentality to BSA compliance. He characterized technology as offering the potential to lessen BSA burden while posing challenges in areas such as cryptocurrencies.

Ranking Member Brown argued that the biggest banks have continued to violate U.S. AML/CFT laws despite large fines. He pushed for eliminating anonymous shell companies through beneficial ownership disclosure and for retaining the terrorism

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and money laundering limitation on information sharing. He also argued that SARs should be sharpened through guidance rather than through higher currency thresholds and said that AI can play an increased role as long as human insight remains part of the process.

Testimony

Sigal Mandelker, Under Secretary for Terrorism and Financial Crime at Treasury, outlined the work of the Office of Terrorism and Financial Intelligence and its AML/CFT goals. She said now is the time to evaluate the BSA framework to ensure it encourages banks to innovate and use resources efficiently. She also broadly praised information sharing and noted FinCEN's new exchange program as a positive public-private forum.

M. Kendall Day, Acting Deputy Assistant Attorney General in the Criminal Division at DoJ, argued that vigorous enforcement of AML laws is needed to safeguard the integrity of the financial system. Most banks comply with the law, but his office has and will pursue willful violators. He also criticized shell companies for shielding bad actors from scrutiny.

Q&A

- **Streamlining SARs:** Sens. Crapo, Tillis (R-NC), and Sasse (R-NE) expressed concern that a large number of SARs are not useful to law enforcement. Ms. Mandelker said that Treasury is reviewing current rules to tailor them to priorities and is also looking at thresholds. She cautioned that they are only in the discussion phase and want to ensure that they retain useful information. Mr. Day emphasized that SARs are very helpful to law enforcement and said any review must preserve this. Sen. Cortez Masto (D-NV) said that currency thresholds could be raised and argued that the detailed narrative requirement for structured exchanges is particularly burdensome. Mr. Day countered that the detailed narratives are particularly useful. Sen. Warner (D-VA) hoped that technology could lessen this reporting burden.
- **Increasing Penalties:** Sen Warren (D-MA) argued that large banks will not fully comply with BSA requirements until senior executives are threatened with imprisonment. Sen. Brown also argued that current penalties are not ensuring large bank compliance. When pressed to give specific recommendations, Mr. Day said that penalties for bulk cash smuggling should be increased.
- **Cryptocurrency:** Sens. Tillis, Warner, Menendez (D-NJ), and Donnelly (D-IN) expressed concern that these are being used to evade sanctions and launder

illicit proceeds. Ms. Mandelker noted that these have been subject to SAR reporting since 2014. Sen. Tillis pushed for Treasury Secretary Mnuchin's task force on cryptocurrency to include law enforcement and Mr. Day agreed but emphasized that Treasury and DoJ already have a robust relationship.

- **Beneficial Ownership:** Sen. Reed (D-RI) asked about the effectiveness of FinCEN's program to require title insurance companies to report beneficial ownership information for certain real estate transactions within particular geographic areas. Specifically, he asked if this information is publicly available or available to Congress. Ms. Signal noted it is not publicly available and both she and Mr. Day emphasized the program's value. Sen. Menendez questioned whether the beneficial ownership requirements of FinCEN's due diligence rule are strict enough and Ms. Mandelker said that they are a step in the right direction. When pressed by Sen. Kennedy (R-LA) for specific legislative recommendations, Mr. Day did not provide any.
- **FinCEN Authority:** Pushing back on an industry recommendation, Sen. Brown argued that FinCEN should not reclaim BSA examination authority from the banking agencies because FinCEN lacks both resources and expertise. Ms. Mandelker said she is prioritizing working with the regulators so that they know AML priorities.
- **Marijuana Banking:** Sen. Menendez (D-NJ) argued that marijuana businesses should be able to access banking services in states where it has been legalized and argued that rolling back current FinCEN guidance in this area would be detrimental. Ms. Mandelker said the guidance will be reviewed.